NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20668
Docket Number TD-20514

William M. Edgett, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Burlington Northern, Inc. (hereinafter referred to as "the Carrier"), violated the currently effective Agreement between the parties, Article 2(b) thereof in particular, when it failed and refused to properly compensate Claimant Train Dispatcher D. L. Stull at time and one-half rate for services performed on December 26, 1971.

(b) Because of said violation, Carrier shall now be required to compensate Claimant D. L. Stull the difference between one (1) day's compensation at the pro-rata daily rate for Relief Chief Dispatcher and time and one-half the daily rate applicable to the excepted Chief Dispatcher for December 26, 1971.

OPINION OF BOARD: Claimant performed service on his regular assignment as Trick Dispatcher from 11:00 p.m. on December 25, to 7:00 a.m. on December 26, 1971. After an interval of one hour, he again performed service from 8:00 a.m. to 5:00 p.m. During this second period of service, he worked as Relief Chief Dispatcher.

The claim is for eight hours punitive pay at the Relief Chief Dispatcher's rate. Carrier resists the claim on procedural grounds as well as on the merits.

Carrier's procedural defense comes about as follows. The claim form submitted by claimant on December 26, 1971 does not state in specific terms the rate of pay claimed. The form has a column for "occupation" and claimant entered his regular occupation, Dispatcher. The form also contains a place to enter the reason for the claim and here Claimant entered "worked 16 continuous hours". On the next day, December 27, 1971, Carrier's superintendent replied: "acknowledge receipt of your time report dated December 26, 1971 claiming eight hours at Relief Chief Dispatcher's rate". Later, after the General Chairman had appealed the denial of the claim, Carrier raised the issue of a change in the claim. That issue must fail. The record shows that from Carrier's first acknowledgement of the claim it understood that the claim was for punitive pay at the rate of the Chief Dispatcher. There has been no change in the claim. Carrier understood that it was for Chief Dispatcher's pay at the punitive rate from the time it was first presented.

The next issue raised in defense of the claim is that a regularly assigned Assistant Chief Dispatcher is not entitled to the punitive rate when serving as Relief Chief Dispatcher. The Chief Dispatcher's position is excepted from the agreement. However, the Board has held that an employee who serves in relief on an excepted position is not removed from coverage of all other provisions of the agreement. One of the other provisions is, of course, that more than eight hours in a day will be considered overtime and paid as such.

Carrier bases its defense on its belief that:

> "The exceptions clearly exclude compensation at the overtime rate on any basis for any assigned train dispatcher, when used on the position of chief dispatcher."

Carrier arrived at the conclusion stated above as a result of its interpretation of Article 2(e) which reads:

> "* * * *An assigned train dispatcher required to work a position other than the one he obtained in the exercise of seniority, except an assigned train dispatcher who is used on the position of chief dispatcher, or assistant chief dispatcher shall be compensated therefore at the overtime rate of the position worked; however, except as provided in Article 18, no additional payment shall be made to such train dispatcher due to not having worked his regular assignment."

This Board has rejected an argument by this Carrier (Award 20017) which attempted to deny the application of the punitive rate to service as Chief Train Dispatcher on rest days. The reasoning of the Board in that case was that Article 2(e) did not serve to modify the clear provisions of Rule 3(b) which provides for the punitive rate for rest day service.

The relationship of the applicable rules is identical in this case. Rule 2(b) requires payment at the punitive rate for service in excess of eight (8) hours on any day. That requirement is not modified or negated by Rule 2(e). The claim must be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1975.